

EXHIBIT 11



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Attorneys for Defendants
THUNDERWOOD HOLDINGS, INC.,
BRIAN DUNNING, and BRIANDUNNING.COM

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

EBAY INC.,)	CASE NO. C 08-4052 JF
)	
Plaintiff,)	RESPONSES OF DEFENDANT
)	THUNDERWOOD HOLDINGS, INC.
vs.)	TO SECOND SET OF REQUESTS FOR
)	PRODUCTION PROPOUNDED BY
DIGITAL POINT SOLUTIONS, INC.;)	PLAINTIFF EBAY INC.
SHAWN HOGAN; KESSLER's FLYING)	
CIRCUS; THUNDERWOOD HOLDINGS,)	
INC.; TODD DUNNING; DUNNING)	
ENTERPRISES, INC.; BRIAN DUNNING;)	
BRIANDUNNING.COM; and DOES 1-20,)	
)	
Defendants.)	

PROPOUNDING PARTY: PLAINTIFF EBAY INC.

RESPONDING PARTY: DEFENDANT THUNDERWOOD HOLDINGS, INC.

SET NO.: TWO (2)

Defendant Thunderwood Holdings, Inc. ("Defendant" and/or "Responding Party") hereby responds to the Second Set of Requests for Production (Nos. 35-36) propounded by Plaintiff eBay Inc. ("Plaintiff" and/or "Propounding Party") as follows:

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1 **GENERAL STATEMENT**

2 Brian Dunning ("Mr. Dunning") has invoked his privilege against
 3 self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v.*
 4 *Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of
 5 the California Constitution, and California Evidence Code section 940. Since Mr. Dunning is
 6 the sole shareholder and sole representative of Responding Party, and Mr. Dunning declines to
 7 sign these discovery responses on behalf of Responding Party. These responses to requests for
 8 documents directed at Responding Party are not a waiver of Mr. Dunning's privilege.

9 Furthermore, the Federal Bureau of Investigation has seized all documents and
 10 computers, disk drives, hard drives, cell phones and servers containing information potentially
 11 related to this matter. Assistant United States Attorney Kyle F. Waldinger in charge of this
 12 investigation has refused all requests to provide defendants with a copy of the material seized
 13 by the FBI. Those items and records may contain information responsive to the requests
 14 below, but those items and records are not in the possession, custody or control of Defendants.

15 Without waiving any of the foregoing, Responding Party responds to the
 16 requests below:

17 **RESPONSES**

18 **REQUEST FOR PRODUCTION NO. 35:**

19 All documents relating to the settlement of the CJ Litigation, including
 20 Communications with Commission Junction regarding settlement, proposed or draft settlement
 21 agreements or portions of such agreements, and any other Documents relating to the
 22 negotiation, drafting and execution of the Settlement Agreement.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 35:**

24 Responding Party objects on the ground that this request is vague and
 25 ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects
 26 to this request on the grounds that, as phrased, the request seeks documents the disclosure of
 27 which might violate the attorney-client privilege and/or the work product doctrine. Subject to
 28 and without waiving the foregoing objections and based on a reasonable interpretation as to the

1 meaning of this request, Responding Party responds as follows: Responding Party will
 2 produce all non-privileged documents responsive to this Request in its possession, custody
 3 and/or control, if any, at a time and place mutually convenient to the parties.

4 **REQUEST FOR PRODUCTION NO. 36:**

5 All documents relating to any termination of a contractual or other business
 6 relationship between any of Defendants and Commission Junction, including any termination of
 7 an agreement entered into between any of Defendants and Commission Junction referred to as a
 8 Publisher Service Agreement.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 36:**

10 Responding Party objects on the ground that this request is vague and
 11 ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects
 12 to this request on the grounds that, as phrased, the request seeks documents the disclosure of
 13 which might violate the attorney-client privilege and/or the work product doctrine. Subject to
 14 and without waiving the foregoing objections and based on a reasonable interpretation as to the
 15 meaning of this request, Responding Party responds as follows: Responding Party will
 16 produce all non-privileged documents responsive to this Request in its possession, custody
 17 and/or control, if any, at a time and place mutually convenient to the parties.

18
 19 DATED: June 3, 2009

RUS, MILIBAND & SMITH
 A Professional Corporation

20
 21
 22 By: 

LEO J. PRESIADO
 Attorneys for Defendants
 Thunderwood Holdings, Inc., Brian Dunning
 and BrianDunning.com

PROOF OF SERVICE

eBay, Inc. v. Digital Point Solutions, Inc., et al.
Northern District of California, San Jose Division
Case No. C 08-4052 JF

STATE OF CALIFORNIA)
) ss.
 COUNTY OF ORANGE)

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 2211 Michelson Drive, Seventh Floor, Irvine, California 92612.

On June 3, 2009, I served the foregoing documents described as **RESPONSES OF DEFENDANT THUNDERWOOD HOLDINGS, INC. TO SECOND SET OF REQUESTS FOR PRODUCTION PROPOUNDED BY PLAINTIFF EBAY INC.** on the interested parties in this action by placing a copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

✓ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Irvine, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

____ (By E-Mail) As follows: I caused the above-referenced document(s) to be transmitted to the above-named persons.

____ (By Facsimile) As follows: I caused the above-referenced document(s) to be transmitted to the above-named persons by facsimile.

____ (By Hand Delivery) As follows: I caused the above-referenced document(s) to be hand delivered to the above-named persons.

____ (By Overnight Delivery) As follows: By overnight delivery via Overnite Express and/or Federal Express to the office of the addressee noted on the attached service list.

Executed on June 3, 2009, at Irvine, California.

✓ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


 RHONDA RADFORD

SERVICE LIST

eBay, Inc. v. Digital Point Solutions, Inc., et al.
Northern District of California, San Jose Division
Case No. C 08-4052

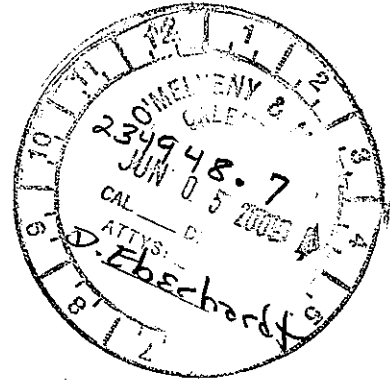
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Attorneys for Defendants
THUNDERWOOD HOLDINGS, INC.,
BRIAN DUNNING, and BRIANDUNNING.COM

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

EBAY INC.,

Plaintiff,

vs.

DIGITAL POINT SOLUTIONS, INC.;
SHAWN HOGAN; KESSLER's FLYING
CIRCUS; THUNDERWOOD HOLDINGS,
INC.; TODD DUNNING; DUNNING
ENTERPRISES, INC.; BRIAN DUNNING;
BRIANDUNNING.COM; and DOES 1-20,

Defendants.

CASE NO. C 08-4052 JF

**RESPONSES OF DEFENDANT
BRIANDUNNING.COM TO SECOND
SET OF REQUESTS FOR
PRODUCTION PROPOUNDED BY
PLAINTIFF EBAY INC.**

PROPOUNDING PARTY: PLAINTIFF EBAY INC.

RESPONDING PARTY: DEFENDANT BRIANDUNNING.COM

SET NO.: TWO (2)

Defendant BrianDunning.com ("Defendant" and/or "Responding Party") hereby
responds to the Second Set of Requests for Production (Nos. 34-35) propounded by Plaintiff
eBay Inc. ("Plaintiff" and/or "Propounding Party") as follows:

///

GENERAL STATEMENT

Brian Dunning ("Mr. Dunning") has invoked his privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code section 940. Since Mr. Dunning is the sole representative of Responding Party, and Mr. Dunning declines to sign these discovery responses on behalf of Responding Party. These responses to requests for documents directed at Responding Party are not a waiver of Mr. Dunning's privilege.

Furthermore, the Federal Bureau of Investigation has seized all documents and computers, disk drives, hard drives, cell phones and servers containing information potentially related to this matter. Assistant United States Attorney Kyle F. Waldinger in charge of this investigation has refused all requests to provide Defendants with a copy of the material seized by the FBI. Those items and records may contain information responsive to the requests below, but those items and records are not in the possession, custody or control of defendants.

Without waiving any of the foregoing, Responding Party responds to the requests below:

RESPONSES

REQUEST FOR PRODUCTION NO. 34:

All documents relating to the settlement of the CJ Litigation, including Communications with Commission Junction regarding settlement, proposed or draft settlement agreements or portions of such agreements, and any other Documents relating to the negotiation, drafting and execution of the Settlement Agreement.

RESPONSE TO REQUEST FOR PRODUCTION NO. 34:

Responding Party objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects to this request on the grounds that, as phrased, the request seeks documents the disclosure of which might violate the attorney-client privilege and/or the work product doctrine. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the

1 meaning of this request, Responding Party responds as follows: Responding Party will
 2 produce all non-privileged documents responsive to this Request in its possession, custody
 3 and/or control, if any, at a time and place mutually convenient to the parties.

4 **REQUEST FOR PRODUCTION NO. 35:**

5 All documents relating to any termination of a contractual or other business
 6 relationship between any of Defendants and Commission Junction, including any termination of
 7 an agreement entered into between any of Defendants and Commission Junction referred to as a
 8 Publisher Service Agreement.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 35:**

10 Responding Party objects on the ground that this request is vague and
 11 ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects
 12 to this request on the grounds that, as phrased, the request seeks documents the disclosure of
 13 which might violate the attorney-client privilege and/or the work product doctrine. Subject to
 14 and without waiving the foregoing objections and based on a reasonable interpretation as to the
 15 meaning of this request, Responding Party responds as follows: Responding Party will
 16 produce all non-privileged documents responsive to this Request in its possession, custody
 17 and/or control, if any, at a time and place mutually convenient to the parties.

18
 19 DATED: June 3, 2009

RUS, MILIBAND & SMITH
 A Professional Corporation

20
 21 By: 

22 LEO J. PRESIADO
 Attorneys for Defendants
 23 Thunderwood Holdings, Inc., Brian Dunning
 24 and BrianDunning.com
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 26
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 28

PROOF OF SERVICE

eBay, Inc. v. Digital Point Solutions, Inc., et al.
Northern District of California, San Jose Division
Case No. C 08-4052 JF

STATE OF CALIFORNIA)
) ss.
 COUNTY OF ORANGE)

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 2211 Michelson Drive, Seventh Floor, Irvine, California 92612.

On June 3, 2009, I served the foregoing documents described as **RESPONSES OF DEFENDANT BRIANDUNNING.COM TO SECOND SET OF REQUESTS FOR PRODUCTION PROPOUNDED BY PLAINTIFF EBAY INC.** on the interested parties in this action by placing a copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

✓ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Irvine, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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____ (By Hand Delivery) As follows: I caused the above-referenced document(s) to be hand delivered to the above-named persons.

____ (By Overnight Delivery) As follows: By overnight delivery via Overnite Express and/or Federal Express to the office of the addressee noted on the attached service list.

Executed on **June 3, 2009**, at Irvine, California.

✓ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


 RHONDA RADFORD

SERVICE LIST

eBay, Inc. v. Digital Point Solutions, Inc., et al.
Northern District of California, San Jose Division
Case No. C 08-4052

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